

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

Peter Wayne Lechman File No. BLH-910327KE

For License to Cover Construction
Permit for Station WBOP(FM)
Churchville, Virginia

MEMORANDUM OPINION AND ORDER

Adopted: March 26, 1996;

Released: April 5, 1996

By the Commission:

1. The Commission has under consideration an "Application for Review" filed on August 14, 1995 by Peter Wayne Lechman ("Lechman"). Lechman requests review of the action taken by the Chief, Audio Services Division by letter dated July 14, 1995, which dismissed in part and denied in part his petition for reconsideration of the May 4, 1993 *Memorandum Opinion and Order*. That *Order* directed Lechman to pay Commonwealth Audio Visual Enterprises, Inc. ("CAVE"), licensee of station WLCC(FM), Luray, Virginia, the sum of \$17,157.18 as reimbursement for switching frequencies to accommodate an upgrade of WBOP(FM) by Lechman.¹ See *Memorandum Opinion and Order*, 8 FCC Rcd 3058 (MMB 1993).

2. In his petition for reconsideration, Lechman argued that certain of the expenses claimed by CAVE were not properly reimbursable because they were unnecessary and unrelated to the frequency change. In the July 14, 1995 letter, the Chief, Audio Services Division, thoroughly considered these assertions and found them to be without merit. We find that Lechman's application for review repeats the arguments previously made in his petition for reconsideration. Further, after carefully reviewing the staff's July 14, 1995 ruling, we find no grounds warranting reversal.

3. In his application for review, Lechman asserts, for the first time, that the Commission's cost reimbursement procedures should be clarified so as to avoid abuse of Commission resources and processes in the future. The procedures require that a party who is ordered to change frequencies to accommodate a proposal by another party is entitled to reimbursement for the legitimate and prudent costs of changing frequencies. See *Memorandum Opinion and Order* in MM Docket No. 89-95, 6 FCC Rcd 1313 (1991). In such cases, the Commission expects the parties to determine expeditiously, mutually and in good faith what are reasonably and prudently incurred reimbursable expenditures. The Commission will involve itself in such matters only as a last resort. See, e.g., *Harold A. Jahnke*, 74 FCC 2d 265 (1979). The Commission, in establishing the guidelines governing the reimbursement owed by the benefiting party,

considers the following items to be reasonable expenses for a channel change: (1) engineering and legal costs; (2) new equipment that is legitimately required for the channel change; (3) the printing of new logs and stationery; (4) out-of-pocket expenses while the station is off the air; and (5) limited advertising for the new frequency (as long as there is not an attempt to improve the station situation at the expense of the reimbursing party). *Circleville, Ohio*, 8 FCC 2d 159, 163-64 (1967). While this list is not all-inclusive, we see no need at this point for further clarification. We continue to believe that most cases can be resolved through the good faith negotiations of the parties involved using these guidelines.

4. ACCORDINGLY, IT IS ORDERED, That, pursuant to Section 1.115(g) of the Commission's Rules, the "Application for Review" filed on August 14, 1995 by Peter Wayne Lechman IS DENIED. In addition, we will continue to HOLD IN ABEYANCE the above-captioned license application (BLH-910327KE) pending notification by Lechman that payment to CAVE in the amount of \$17,157.18 has been made.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

¹ On August 28, 1995 CAVE filed an opposition to Lechman's

Application for Review.